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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-275

AVERY S. ADKINS, *et al*,

Petitioners,

versus

CLARKE W. ADICKES, II, *et al*,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF FACTS

In general the Respondents do not object to the Petitioners' statement of case and statement of facts. The Respondents however must take issue with respect to two specific statements made by the Petitioners.

The Petitioners state on page 11 of their petition that "the Constitution of the PCUS contains no provision against the withdrawal of a member church." This is not an accurate

appraisal of the Constitution of the Presbyterian Church in the United States PCUS. The Book of Church Order (BOCO), section 16-7 states that "The Presbytery has power: . . . (7) To organize new churches. (8) To receive and dismiss churches. (9) To dissolve churches. (10) To control the location of new churches and of churches desiring to move to new locations . . ." See page 173 of the Transcript of Record in the Court below, folios 689-690.

On page 13 of their petition, the Petitioners state that "The First Presbyterian Church of Rock Hill, an eleemosynary corporation, by resolution adopted on July 1, 1973, severed itself and its properties from Bethel Presbytery and the PCUS, . . ." This the First Presbyterian Church of Rock Hill could not unilaterally do. What Petitioners should have said was that the group represented by the Petitioners voluntarily severed themselves from the denomination and attempted to sever the relationship of the First Presbyterian Church of Rock Hill to the denomination.

ARGUMENT

Petitioners assert there are three reasons for granting certiorari. These are stated to be:

I. The Supreme Court of South Carolina has decided a federal question of substance in a way not in accord with the applicable decisions of this Court.

II. The Supreme Court of South Carolina has decided a federal question of substance not heretofore determined by this Court.

III. The issues presented by the petition urgently require decision by this Court to assure uniform nationwide application of First and Fourteenth Amendment safeguards to local churches and State eleemosynary corporations.

There is merit to none of these contentions.

I. HAS THE SUPREME COURT OF SOUTH CAROLINA DECIDED A FEDERAL QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE APPLICABLE DECISIONS OF THIS COURT?

In the Opinion below which is reported at 215 S.E.2d 442, the Supreme Court of South Carolina stated, "The basic question for the Court is: Which of these two competing groups comprises the First Presbyterian Church of Rock Hill?" Page 43, Appendix A, of Petition.

In answering that question the Supreme Court of South Carolina relied upon its prior decision of *Bramlett, et al v. Young, et al*, 229 S.C. 519, 93 S.E.2d 873 (1956) and the concession "that the Book of Church Order, which is the controlling authority of the Presbyterian Church in the United States and, in turn, the Bethel Presbytery and the First Presbyterian Church of Rock Hill, has remained unchanged insofar as any distinction between this case and *Bramlett* which would warrant a different result." Pages 45-46, Appendix A, of Petition.

The First Presbyterian Church of Rock Hill had, since its inception, been a part of the Presbyterian Church in the United States and the Bethel Presbytery (one of the ascending judicatories of the Presbyterian Church in the United States). Page 43, Appendix A, of Petition. The Bethel Presbytery (the proper and appropriate judicatory of the denomination) recognized the respondents as constituting the First Presbyterian Church of Rock Hill. Page 42, Appendix A, of Petition.

The South Carolina Court then cited from *Bramlett* the following:

> When a division occurs in a church congregation, which is always unfortunate, the question as to which faction is entitled to the church property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division or schism, and that is determined by which of the two factions adhere to or is sanction-

> ed by the appropriate governing body of the denomination. It is a question of identity.
>
> The appellants cannot now comprise McCarter Presbyterian Church because they have seceded and disassociated themselves by their voluntary action and vote, from any connection with Enoree Presbytery and the Presbyterian Church in the United States. They are now engaged in worship as an independent church. Page 45, Appendix A, of Petition.

And then stated, "The same result is required in the case at bar."

In other words, what the South Carolina Court did was to identify the respondents as The First Presbyterian Church of Rock Hill. In doing so it passed upon no questions of a theological or ecclesiastical nature. It inquired into no questions of doctrine or departure therefrom. The Supreme Court of South Carolina, contrary to some state courts, has a long history of such proper treatment of church disputes.

In *Bramlett* the Court said:

> We should keep in mind the authority of the civil courts to determine the issue here involved. In the case of *Turbeville v. Morris*, 203 S.C. 287, 26 S.E.2d 821, 827, the authority of the civil courts, with reference to a church controversy, is fully outlined, as follows:
>
> 'The civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters. To assume such jurisdiction would not only be an attempt by the civil courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty, untrammeled by state authority. On this principle,

> the action of church authorities in the deposition of pastors and the expulsion of members is final. Where, however, a church controversy necessarily involves rights growing out of a contract recognized by the civil law, or the right to the possession of property, civil tribunals cannot avoid adjudicating these rights, under the law of the land, having in view, nevertheless, the implied obligations imputed to those parties to the controversy who have voluntarily submitted themselves to the authority of the church by connecting themselves with it.'
>
> See also *Morris St. Baptist Church v. Dart*, 67 S.C. 338, 45 S.E. 753.

Page 822 of 93 S.E.2d, Page 537 of 229 S.C.

This Court has decided seven important cases which delineate the proper course for state courts to follow in church disputes. These cases are *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872); *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131 (1872); *Gonzalez v. Archbishop of Manila*, 280 U.S. 1 (1929); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U. S. 94 (1952); *Kreshik v. Russian Orthodox Church*, 363 U.S. 190 (1960); *Presbyterian Church v. Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); and *Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970).

In *Watson* this Court was faced with the same issue which confronted the South Carolina Supreme Court in the instant case and in *Bramlett;* i.e., which of two factions of a Presbyterian Church split by a schism should have the church property, the one recognized as the church by the appropriate judicatory of the denomination, or the seceding group?

In holding for the group recognized by the General Assembly of the Presbyterian Church, this Court said:

> In this class of cases we think the rule of action which should govern the civil courts founded in a broad and sound view of the relations of church and state under our system of laws, . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. 80 U.S. at 727.

This Court clearly illuminated its reason for recognizing the conclusiveness of decisions of church judicatories in such matters when Mr. Justice Miller wrote at 80 U.S. 728 "All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it." Quoted with approval by Mr. Justice Brannan in *Presbyterian Church v. Hull, supra.*

The South Carolina Supreme Court closely followed *Watson* in both this case and *Bramlett.*

In *Bouldin* this Court applied the proper *Watson* rule to a church having a congregational policy.

In *Gonzalez v. Archbishop of Manila, supra,* this Court qualified the *Watson* rule of giving conclusive effect to the decisions of proper church tribunals by stating through Mr. Justice Brandeis:

> In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. 280 U.S. at 160.

No question of fraud, collusion or arbitrariness has been here raised, so there is no conflict with *Gonzalez.*

In *Kedroff v. St. Nicholas Cathedral, supra,* this Court held a statute of the State of New York, recognizing the autonomy and independence of Russian Orthodox churches which had declared their independence from the general church in Moscow, an unconstitutional invasion of the legislature into the government and control of the church in violation of the free exercise clause of the First Amendment.

Relying upon the *Watson* rule, Mr. Justice Reed stated:

> The opinion [of Watson v. Jones] radiates . . . a spirit of freedom for religious organizations, and independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference. . . . 344 U.S. at 116.

In *Kreshik v. Russian Orthodox Church, supra,* this Court held that the New York Courts could not do without the unconstitutional statute that which had been prohibited in *Kedroff.*

Nothing in this case or in *Bramlett* runs counter to either *Kedroff or Kreshik.* As a matter of fact, *Kedroff* is cited and followed in *Bramlett.* See page 887 of 93 S.E.2d.

In *Presbyterian Church v. Hull Memorial Presbyterian Church, supra* it was quite correctly and not surprisingly held that the Georgia Court had erred in basing a decision as to the ownership of church property on a jury's determination of an alleged departure from doctrine.

Mr. Justice Brennan, speaking for the Court, stated:

> The question presented is whether the restraints of the First Amendment, as applied to the States through the Fourteenth Amendment, permit a civil court to award church property on the basis of the interpre-

tation and significance the civil court assigns to aspects of church doctrine. 393 U.S. at 441.

This Court answered that question by holding:

> The Georgia courts have violated the command of the First Amendment. The departure-from-doctrine element of the implied trust theory which they applied requires the civil judiciary to determine whether actions of the general church constitute such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated. This determination has two parts. The civil court must first decide whether the challenged actions of the general church depart substantially from prior doctrine. In reaching such a decision, the court must of necessity make its own interpretation of the meaning of church doctrines. If the court should decide that a substantial departure has occurred, it must then go on to determine whether the issue on which the general church has departed holds a place of such importance in the traditional theology as to require that the trust be terminated. A civil court can make this determination only after assessing the relative significance to the religion of the tenets from which departure was found. Thus, the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role. *Id.* at 449-50.

In the instant case the Supreme Court of South Carolina neither violated nor ignored *Hull*. On the contrary, it held "a review of that case (*Hull*) convinces us that it is of no comfort to the appellants here and certainly it does not require a result contrary to *Bramlett*. By a determination of

this case, this Court exercises no role in determining ecclesiastical questions. We merely settle a dispute on the question of identity, which in turn necessarily settles a dispute involving the control of property." Page 46, Appendix A, of Petition.

Hull expressly recognizes the conclusiveness of the decision of the appropriate church tribunal, absent "fraud, collusion, or arbitrariness" when the matter finds its way into civil courts.

Hull requires "civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." 393 U.S. at 449.

That is exactly what the Supreme Court of South Carolina did in this case when it applied the *Watson* rule. Here the appropriate church tribunal, the Bethel Presbytery, had recognized the loyal minority (the respondents) as the First Presbyterian Church of Rock Hill. Constituting the First Presbyterian Church of Rock Hill, they (the respondents) were entitled to the use of that name and the control of the property of that church.

Rather than the decision of the Supreme Court of South Carolina being contrary to the applicable decisions of this Court, if followed them explicitly.

Petitioners rely heavily upon *Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc., supra.* To be more accurate, petitioners really rely upon the Opinion of the Court of Appeals of Maryland.

What this Court did there in a *per curiam* Opinion was to affirm the Maryland Court's resolution of a property dispute, on the basis that it involved no inquiry into religious doctrine prohibited by *Hull*, and thus involved no federal question. The same is true here for the Supreme Court of South Carolina scrupulously avoided entanglement in a thicket of theology, doctrine or ecclesiastical matters and thus no federal question is involved.

But petitioners would argue that the *Eldership* case requires the application of five, and only five, "neutral principles of law" for civil courts to decide church property questions.

These are said to be:

(1) An examination of state statutes regarding the holding of property by religious corporations;

(2) An examination of specific statutes pertaining to certain denominations;

(3) An examination of deeds for reversion clauses upon withdrawal of a member church or departure from doctrine;

(4) An examination of the corporation charter of the local church and its by-laws; and

(5) An examination of the constitution of the parent body for provisions relating to ownership of local church property and provisions for forfeiture of property upon withdrawal of a member church.

The source of these all inclusive "neutral principles of law" is not stated in the petition, but it certainly is neither the *per curiam* Opinion of this Court in the *Eldership* case nor the concurring Opinion of Mr. Justice Brennan, joined by Justices Douglas and Marshall.

The *per curiam* Opinion states:

> Since, however, the Maryland court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question. 396 U.S. at 368.

The same result is called for here.

In the concurring Opinion of Mr. Justice Brennan, he sets out three constitutionally permissible approaches for State courts to use in the resolution of church property disputes. These are said to be:

(1) The *Watson* rule;

(2) The application of "neutral principles" of property law such as study of deeds, reverter clauses and general state corporation law; and

(3) The passage of special statutes governing church property arrangements in such a manner as to preclude state interference in doctrine.

Mr. Justice Brennan in no way implies that these are the only approaches, nor does his Opinion state any preference among the approaches listed.

The Supreme Court of South Carolina adopted the *Watson* approach. It did this without resort to any inquiry into doctrine or theology.

In the *Maryland and Virginia Eldership* case, *supra*, in footnote 1, 396 U.S. at 369, Mr. Justice Brennan quotes from *Watson v. Jones, supra*, as follows:

> Under the *Watson* definition, *supra*, at 722-723. congregational polity exists when 'a religious congregation ***, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority." Hierarchical polity, on the other hand, exists when 'the religious congregation * * * is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.'

Obviously the Presbyterian Church in the United States has a hierarchical polity. As a matter of fact, this Court expressly said so in *Hull*, 393 U.S. at 441-42:

> Petitioner, Presbyterian Church in the United States, is an association of local Presbyterian churches

governed by a hierarchical structure of tribunals which consists of, in ascending order, (1) the Church Session, composed of the elders of the local church; (2) the Presbytery, composed of several churches in a geographical area; (3) the Synod, generally composed of all Presbyteries within a State; and (4) the General Assembly, the highest governing body.

Under the *Watson* rule, the civil courts enforce the decision of the highest church tribunal that has ruled on the dispute at issue. Here that church tribunal was the Bethel Presbytery which recognized the respondents and the group they represent as the First Presbyterian Church of Rock Hill. See Page 42, Appendix A, of the petition.

Here the Supreme Court of South Carolina has decided no federal question of substance in a way not in accord with the decisions of this Court.

II. HAS THE SUPREME COURT OF SOUTH CAROLINA DECIDED A FEDERAL QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THIS COURT?

The Petitioners contend that the Presbyterian Church in the United States, through its hierarchical system of courts, is unlawfully exercising control over non-ecclesiastical matters involving the First Presbyterian Church of Rock Hill, a South Carolina eleemosynary corporation. The Petitioners are asserting that the Presbyterian Church in the United States has no interest in or connection with the First Presbyterian Church of Rock Hill with respect to non-ecclesiastical matters and that the membership of the corporation is entirely separate, independent and not a part of or subject to the Presbyterian connectional system of church government.

Such assertions are completely erroneous and misleading.

The corporate by-laws of the First Presbyterian Church of Rock Hill, which are a part of the record in this case, are

clear and unambiguous on this point. Page 55, Appendix C of Petition. Article I, Section 2 provides:

> The purpose of the corporation is entirely religious and chartable and its doctrines are those of the Presbyterian Church in the United States.

Article II, Section 1 states:

> The policies and procedures to be followed by the corporation in the conduct of its spiritual and business affairs shall be in accordance with the Book of Church Order of the Presbyterian Church in the United States.

Section 6-2 of the Book of Church Order (BOCO) Appendix D of Petition, page 60, provides that if a particular church is incorporated "the provisions of its charter and by-laws must always be in accord with the Constitution of the Presbyterian Church in the United States." (The Book of Church Order is a part of the Constitution of the Presbyterian Church in the United States. See Appendix to Respondents' brief, page 17.)

Section 6-2 further provides that the membership of the incorporated church is identical to the communing membership of the church congregation. In the Presbyterian form of government (which was expressly adopted by this corporation in its by-laws) the congregation is that body of persons recognized as members of the particular church (corporation) by the respective courts of the church.

Thus where there is a division and two different groups contend that each represents the membership of the church (the corporation) it is a question of identity. The South Carolina Supreme Court clearly and correctly resolved this question by examining the corporate by-laws and constitution which is a proper application of neutral principles of law in accord with the decisions in *Watson v. Jones*, and *Presbyterian Church v. Hull, supra.*

On page 34 of their petition the Petitioners state, "Citizens have a right not to have their religious freedom hindered

by the State. They also have the right not to have their civil or secular freedom or rights hindered by the church."

Citizens also have a right to associate themselves with or not associate themselves with a church with a hierarchical polity. But when an association is made with such church, it carries with it obligations and duties not present in a church having a congregational polity.

The Petitioners, despite the utter rejection of their contention by the lower Court, still contend that the Bethel Presbytery and the Presbyterian Church in the United States seek the property of the First Presbyterian Church of Rock Hill. This has never been true and this action has been brought by a group of members of the First Presbyterian Church of Rock Hill who have been recognized as the group constituting such church by the appropriate judicatory or tribunal of the Presbyterian Church in the United States.

Where corporate by-laws expressly and clearly set forth a procedure for determining questions of membership identity by reference to church courts, the decision of the South Carolina Supreme Court recognizing the validity of these by-laws does not raise any federal question of substance not heretofore determined by the United States Supreme Court. See *Watson, supra.*

The Supreme Court of South Carolina, contrary to the Petitioners' assertion, did not bestow upon Bethel Presbytery or the Presbyterian Church in the United States the power to control property of the First Presbyterian Church of Rock Hill. It merely gave recognition to the action of the appropriate church tribunal of the denomination of which the First Presbyterian Church of Rock Hill has always been a part and is still a part.

III. DO THE ISSUES PRESENTED BY THE PETITION REQUIRED DECISION BY THIS COURT TO ASSURE UNIFORM NATIONWIDE APPLICATION OF FIRST AND FOURTEENTH AMENDMENT SAFEGUARDS TO LOCAL CHURCHES AND STATE ELEEMOSYNARY CORPORATIONS?

As their third and final "reason" for requesting the granting of a Writ of Certiorari, the Petitioners assert that guidelines and rules of law established by this Court in *Watson v. Jones, supra,* and *Presbyterian Church v. Hull, supra,* are not sufficiently clear to enable local churches and congregations to protect themselves and their properties. The Petitioners refuse to recognize that a local congregation, incorporated as well as unincorporated, may choose to associate itself with and become a part of a hierarchical or connectional church and may adopt by-laws and constitutions providing for this form of government. This, of course, is precisely what was done by the First Presbyterian Church of Rock Hill and there is nothing unique or unusual or unconstitutional with respect to this arrangement.

In essence the Petitioners are asking the Court to rewrite the by-laws, charter and constitution of the First Presbyterian Church of Rock Hill. They are suggesting that the Court establish a rule of law which would expressly prohibit any religious or eleemosynary corporation from adopting by-laws and constitutions subjecting itself to or becoming an integral part of a hierarchical form of church government.

We believe that this would be contrary to every decision heretofore rendered by this Court and by the Supreme Court of South Carolina relating to the application of the First and Fourteenth Amendments to the Constitution.

In the case at hand, the South Carolina Supreme Court has carefully followed the Constitutional guidelines clearly set forth in *Watson v. Jones, supra* and *Presbyterian Church v. Hull, supra,* and approved in *Maryland and Virginia Eldership v. Church of God at Sharpsburg, supra.* In view of the records before the South Carolina Supreme Court, which

included the by-laws and Constitution of the corporation, that Court properly concluded that:

> . . . Due process has not been denied the appellants. By joining the First Presbyterian Church of Rock Hill the members did not acquire such an interest in the property that they are entitled to take with them upon seceding. The property belonged to the First Presbyterian Church of Rock Hill before the members joined the church, and it belongs to the same after they have withdrawn. They simply are not now a part of that church. There is nothing in the ruling of the lower court, nor in our ruling today, which establishes, sponsors, advances, or supports either the religious belief of the majority or the minority in this case. This Court has traditionally avoided any intrusion upon religious matters and has confined its rulings in such cases to identifying the faction which represents the church after a schism occurred. We have accepted the findings of the appropriate church judicatory as to the matter of identity. In so doing, we apply neutral principles of law referred to in *Hull*.

CONCLUSION

For the foregoing reasons your Respondents respectfully pray that this Honorable Court issue an Order denying the Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX

Except from the Book of Church Order of the Presbyterian Church in the United States

Preface

. . .

II. THE CONSTITUTION DEFINED

The Constitution of the Presbyterian Church in the United States consists of its doctrinal symbols, embraced in the Confession of Faith and the Larger and Shorter Catechisms, together with the Book of Church Order, which comprises the form of Government, the Rules of Discipline, and the Directory for Worship.

CERTIFICATE OF SERVICE

In compliance with Paragraph 1 of Rule 33 of the Rules of the Supreme Court of the United States, I hereby certify that I have served the required copies of the Brief of Respondents in Opposition to Petition for Writ of Certiorari on Thomas E. McCutchen, Esquire, of Whaley, McCutchen & Blanton, Attorneys for the Petitioners, by depositing the same in the United States Post Office on the 19th day of September, 1975, with first class postage prepaid, addressed to said Attorney for Petitioners at Post Office Drawer 11268, Columbia, S. C. 29211.

J. D. TODD, JR.